

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Quinter Public Schools
Unified School District No. 293
Quinter, Kansas
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-421315
CC Docket No. 02-6

ORDER

Adopted: December 4, 2006 Released: December 4, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant a Request for Review filed by Quinter Public Schools Unified School District No. 293 (Quinter) seeking review of a decision by the Schools and Libraries Division of the Universal Service Administrative Company (USAC). The USAC decision at issue denied funding for discounted services in Funding Year 2004 of the schools and libraries universal service mechanism. As explained below, we find that special circumstances exist to justify remanding the application associated with this appeal to USAC for further action consistent with this Order. To ensure that Quinter's underlying application is resolved expeditiously, we direct USAC to initiate contact with Quinter as outlined in this order within 14 days from the release of this Order and issue a decision based on a complete review and analysis no later than 90 days from the release of this Order.

2. Under the schools and libraries universal service support mechanism, commonly referred to as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts on eligible telecommunications services, Internet access, and internal connections. The Commission vested in USAC the responsibility for administering the application process for the universal service support mechanism. Accordingly, USAC reviews the applications for discounts

1 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Allaire T. Homburg, Quinter Public Schools Unified School District No. 293, dated Aug. 30, 2005 (Administrator's Decision on Appeal); Letter from Allaire T. Homburg, Quinter Public Schools Unified School District No. 293, to Federal Communications Commission, filed Oct. 3, 2005 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. §§ 54.501, 54.502, 54.503.

3 47 C.F.R. § 54.705(a)(1). The Schools and Libraries Committee oversees the administration of the schools and libraries support mechanism. Id. See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on

that it receives, and issues funding commitments in accordance with the Commission's rules. Under the schools and libraries universal service support mechanism, applicants may only seek support for eligible services.⁴ Pursuant to its operating procedures, USAC performs a Program Integrity Assurance (PIA) review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses.⁵

3. In its Funding Year 2004 application, filed on February 3, 2004, Quinter sought discounts for an annual lease and monthly service to provide Interactive Video for instructional purposes (or distance learning).⁶ In the Item 21 Attachment to Quinter's FCC Form 471, Quinter indicated that the request for discounts included on-premise termination equipment and a fiber lease.⁷ The amount of pre-discount funding requested in Quinter's application was \$16,599.⁸ During PIA review, Quinter was instructed that the on-premise equipment would be presumed to be internal connections unless the presumption could be overcome.⁹ To evaluate Quinter's request, USAC posed questions based on indicia

Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee). Under the rules adopted in the Commission's Eighth Reconsideration Order, the Schools and Libraries Committee's functions include, but are not limited to, "development of applications and associated instructions," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations."

⁴ See 47 C.F.R. § 54.504; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060- 0806, at 20 (October 2003) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities and uses). See also USAC website, <<http://www.sl.universalservice.org/data/pdf/i471y7.pdf>>.

⁵ See USAC website, PIA, <<http://www.sl.universalservice.org/reference/6pia.asp>>.

⁶ See FCC Form 471, Quinter Public Schools Unified School District No. 293, filed February 3, 2004 (Quinter FCC Form 471). The Funding Request Number (FRN) at issue in this case is 1162690.

⁷ See Quinter FCC Form 471, Item 21 Attachment. Quinter attached a certification to its Item 21 Attachment stating that: 1) The on-premise equipment will be provided by the same service provider that provides the eligible telecommunications or Internet access service of which the on-premise equipment is a part; 2) Ownership of the equipment will not transfer to the school in the future, and the relevant contract or lease does not include an option to purchase the equipment by the school; 3) The school has no contractual right to exclusive use of the equipment; 4) Upfront capital charges of the on-premise equipment are less than 67% of total charges (recurring plus non-recurring) in the funding year; 5) The equipment will not be used by the school for any purpose other than the receipt of the eligible telecommunications or Internet access service; 6) The Local Area Network for data communications of the school is functional without dependence on the equipment; 7) Responsibility for maintaining the equipment rests with the service provider, not the school. *Id.*

⁸ *Id.*

⁹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Evone Waggoner, Quinter Public Schools Unified School District No. 293, dated Oct. 27, 2004 (October 27 PIA Review Letter). In the *Tennessee Order*, the Commission determined that a facility located on an applicant's premises should be presumed to be a component of internal connections, but that an applicant may rebut that presumption. See *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, at 13753-54, paras. 37-38 (1999) (*Tennessee Order*). In analyzing the facts presented in the *Tennessee Order*, the Commission concluded that this presumption had been rebutted. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18

set forth in the *Tennessee Order* to determine whether on-premises equipment should be funded as internal connections or funded as telecommunications or Internet access.¹⁰ On December 7, 2005, USAC requested that Quinter submit a diagram to depict the location of the requested leased equipment, including the line of demarcation, and the location of the requested leased fiber.¹¹ USAC also provided the cite to a webpage that provides sample diagrams and recommended that Quinter look at the diagrams and adapt them to Quinter's situation.¹² On December 14, 2004, Quinter submitted the requested diagrams and stated that the type of fiber it was requesting was single mode fiber that connects the central office to the high school's classroom.¹³ On January 5, 2005, USAC sought additional information asking for the location of the line of demarcation on the diagrams Quinter had submitted and the location of a second classroom depicted on the diagram.¹⁴ On January 6, 2005, Quinter submitted a revised diagram depicting the line of demarcation and stating there was not a second classroom at Quinter.¹⁵ Although USAC determined that Quinter provided the correct responses to USAC's questions during PIA review, it

FCC Red 26912, at 26930-31, para. 46 (2003). The Commission found that certain indicia supported its conclusion that the facilities should be deemed as part of an end-to-end service. *Id.* Such indicia included the fact that the applicant's internal connections would function without dependence on the service provider's equipment, ownership of the facility, the lack of a lease-purchase arrangement, the lack of an exclusivity arrangement, and the fact that the service provider was responsible for maintenance of the facility. *Id.* Although the Commission concluded that it is administratively efficient for USAC to use the factors relied upon in the *Tennessee Order* as a processing standard, it also found that the Commission did not establish a per se requirement in the *Tennessee Order* that an applicant must meet all factors in order to receive discounts on service provider charges for the cost of leasing on-premises equipment. *Id.* at paras. 46-47.

¹⁰ Specifically, USAC asked the following questions: 1) Is the leased on-premise equipment an integral component of a Telecommunications or Internet access service (Quinter responded: "Telecommunications"); 2) Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet access service? (Quinter responded: "Yes"); 3) Does the responsibility for maintaining the equipment rest with the service provider? (Quinter responded "Yes"); 4) Will ownership of the equipment transfer to the school or library in the future? (Quinter responded "No"); 5) Does the relevant contract or lease include an option for the applicant to purchase the equipment? (Quinter responded "No"); 6) Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Services or Internet access of which it is a part? (Quinter responded "No"); 7) Will the school's or library's internal data communications network function without dependence on the equipment? (Quinter responded "Yes"); 8) Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers? (Quinter responded "No"). October 27 PIA Review Letter at 3. Quinter sent the responses noted above to the October 27 PIA Review Letter on November 1, 2004. *See* Letter from Evone Waggoner, Quinter Public Schools Unified School District No. 293, to Douglas May, Schools and Libraries Division, Universal Service Administrative Company, dated Nov. 1, 2004.

¹¹ *See* E-mail from Schools and Libraries Division, Universal Service Administrative Company, to Evone Waggoner, Quinter Public Schools Unified School District No. 293, dated Dec. 8, 2004.

¹² *Id.* The current equivalent to this webpage is <http://www.universalservice.org/sl/applicants/step06/on-premise-priority1-equipment.aspx#5>.

¹³ *See* Facsimile from Evone Waggoner, Quinter Public Schools Unified School District No. 293, to Douglas May, Schools and Libraries Division, Universal Service Administrative Company, dated Dec. 14, 2004.

¹⁴ *See* E-mail from Schools and Libraries Division, Universal Service Administrative Company, to Evone Waggoner, Quinter Public Schools Unified School District No. 293, dated Jan. 5, 2005.

¹⁵ *See* Facsimile from Evone Waggoner, Quinter Public Schools Unified School District No. 293, to Douglas May, Schools and Libraries Division, Universal Service Administrative Company, dated Jan. 6, 2005. Quinter stated that there is not a second classroom at this time and that the diagram provided was to show how a second classroom would be configured in its network.

determined that because the diagrams indicated multiple demarcations into the local area network (LAN), the application failed the test set out in the *Tennessee Order*.¹⁶ By letter dated May 10, 2005, USAC denied Quinter's application for discount funding on the ground that requests for internal connections were not funded at Quinter's discount level.¹⁷

4. On June 22, 2005, Quinter appealed USAC's decision, asserting that its application sought discounts for telecommunications rather than internal connections.¹⁸ USAC denied the appeal on August 30, 2005, finding that Quinter's diagrams showed more than one demarcation point and that USAC was unable to determine the demarcation point where the service provider responsibility ends and district responsibility begins.¹⁹ The Administrator's Decision on Appeal also stated that Quinter's funding request included costs for a district-provided wide area network (WAN), which is an ineligible service.²⁰ On September 27, 2005, Quinter sent a subsequent appeal letter to USAC claiming that Quinter had made a mistake on its diagram in drawing the demarcation point.²¹ It attached a new drawing and asserted that the drawing showed a separation between the Distance Learning Circuit and the LAN.²² Quinter also proposed that USAC may have confused this funding request with another because USAC mentioned a "district provided WAN" as an ineligible service in its Administrator's Decision Letter on Appeal.²³ Quinter reiterated that its funding request was for a lease for a Distance Learning Circuit.²⁴

¹⁶ Tennessee Diagrams for USAC Review, Application No. 421315 Quinter USD 293, dated Mar. 17, 2005. (USAC Review Memorandum).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Evone Waggoner, Quinter Public Schools Unified School District No. 293, dated May 10, 2005, at 5 (Funding Commitment Decision Letter). USAC reclassified the funding request from telecommunications to internal connections which meant that it would be processed at a 65% discount, which was below the funding threshold for internal connections in Funding Year 2004. *See* USAC Review Memorandum. If USAC had approved the request as telecommunications, it would have been funded because telecommunications and Internet access requests have priority funding over internal connections.

¹⁸ Letter from Allaire T. Homburg, Quinter Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated Jun. 22, 2005 (Quinter USAC Appeal). Quinter claimed that its request was incorrectly changed to internal connections during the review process and is eligible for funding under the category telecommunications based on the definitions of ITV, On-Premise Equipment for End-to-End Service, and Distance Learning Circuits, and Digital Transmission Services from the Eligible Services List (ESL). *Id.* Quinter stated that the service would not be providing connectivity within school grounds.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Allaire T. Homburg, Quinter Public Schools Unified School District No. 293, dated Aug. 30, 2005, at 2 (Administrator's Decision on Appeal).

²⁰ *Id.*

²¹ Letter from Allaire T. Homburg, Quinter Public Schools Unified School District No. 293, to Schools and Libraries Division, Universal Service Administrative Company, dated Sept. 27, 2005 (Second USAC Appeal).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

USAC dismissed Quinter's Second USAC Appeal as moot.²⁵ On March 18, 2005, Quinter filed the instant Request for Review.

5. In its Request for Review, Quinter argues that, in the revised drawing, the demarcation point shows a separation between the Distance Learning Circuit and the LAN.²⁶ Quinter again raises its concern that USAC has described its service request as a 100 percent ineligible district-provided WAN.²⁷ In this Request for Review, Quinter further re-asserts that this service request was for a lease for a distance learning circuit and not a WAN and that USAC may have been confused when it was reviewing another service request of Quinter's which was for a WAN.²⁸

6. We have reviewed the underlying record and conclude that this application and revised diagram should be remanded to USAC. As discussed above, USAC determined that although Quinter answered the *Tennessee Order* questions and satisfied the criteria, Quinter's service request was not eligible as telecommunications solely based on the diagrams it submitted.²⁹ Additionally, by dismissing Quinter's Second USAC Appeal as moot, USAC did not review Quinter's revised diagram, which Quinter claims shows a clear demarcation point. Because Quinter's answers to the questions from the *Tennessee Order* were apparently inconsistent with the diagrams Quinter submitted, we find that USAC should have contacted Quinter again to determine with certainty whether Quinter had rebutted the presumption that facilities located on an applicant's premises should be presumed to be internal connections. Had USAC done so, Quinter could have provided the revised diagrams Quinter submitted with its Second USAC Appeal, which may have explained the apparent inconsistency. We therefore grant Quinter's appeal and remand Quinter's application to USAC with instructions for USAC to reconsider the entire application, including Quinter's Second USAC Appeal, and to conduct outreach to determine whether Quinter's request should have remained in the telecommunications category as claimed by Quinter. Such outreach should include, but should not be limited to, assisting Quinter in constructing a diagram that accurately depicts the location of its equipment and demarcation point(s).³⁰

7. In remanding this matter to USAC, we make no findings as to the ultimate eligibility of the requested services.³¹ The inconsistency between USAC's interpretation of Quinter's diagram and Quinter's correct answers to the questions based on the *Tennessee Order* criteria indicates that USAC should have conducted a more detailed inquiry to determine whether Quinter's request was for

²⁵ Letter from Schools and Libraries Decision, Universal Service Administrative Company, to Allaire T. Homberg, Quinter Public Schools Unified School District No. 293, dated October 28, 2005 (Second Administrator's Decision on Appeal). USAC claimed that the issue raised had been resolved in the Administrator's Decision Letter on Appeal released on Aug. 30, 2005.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See USAC Review Memorandum.

³⁰ Merely referring Quinter to a webpage of sample diagrams does not qualify as the outreach we are requiring by this Order. See E-mail from Schools and Libraries Division, Universal Service Administrative Company, to Evone Waggoner, Quinter Public Schools Unified School District No. 293, dated Dec. 8, 2004. Instead, we require USAC to contact Quinter with any questions it has about the Quinter diagrams until USAC has full understanding of the configuration of Quinter's service request.

³¹ We are committed to guarding against waste, fraud and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes.

telecommunications or internal connections. While USAC may ultimately find that Quinter does not adequately rebut the internal connections presumption, we find that USAC does not yet have enough information to make that determination. Further, as the Commission considers additional steps to reform and improve the E-rate program in the *Comprehensive Review* proceeding, we find that the public interest and the goals of section 254(h) of the Communications Act are best served by requiring USAC to reconsider Quinter's application, including the revised diagram filed with Quinter's Second USAC Appeal, and to work with Quinter to determine if indeed its request should be considered eligible telecommunications.³²

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Quinter Public Schools Unified School District No. 293, Quinter, Kansas, on October 3, 2005, IS GRANTED and REMANDED to USAC for further action consistent with this decision.

9. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, USAC SHALL initiate contact with Quinter Public Schools Unified School District No. 293 within 14 days from the release of this Order and ISSUE a decision based on a complete review and analysis no later than 90 calendar days from the release of this Order.

10. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

³² See 47 U.S.C. § 254(h). The Commission has started a proceeding to address, among other things, changes that may need to be made to the application and disbursement process for the schools and libraries support mechanism. See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review*).